

Indiana School Safety Academy  
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Child Custody Issues Facing School Administrators  
Or  
Trying to Untangle the Hairs Before Pulling Them Out

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*[NOTE: This paper is written for informational purposes only and not as legal advice. For a particular situation facing the school district, consult legal counsel.]*

## Introduction

The problem could be one with a tragic result like that faced by a Tennessee school district when an estranged husband in the middle of a bitter divorce and custody fight murdered his wife's two children (one of whom was his offspring) after the school improperly allowed him to sign them out. *Haney v. Bradley County Board of Ed.*, 160 S.W.3d 886 (Tenn.App. 2005). Similarly, according to the National School Boards Association in its "Legal Clips" edition on October 10, 2013 citing an article from *The San Diego Union-Times* on 10/3/13 by Kristana Davis and stating that a federal district court awarded a father \$2.8 million when his child was kidnapped and taken to Mexico after the elementary school's negligent release of his child to a non-parent.

Or, in comparison, the dilemma's outcome may be nothing more than a custodial parent's angry feelings followed by apologies from the school when the principal permitted the noncustodial parent to have lunch with her child in disregard of the custodial parent's express directive not to. Lastly, there may be those rare times when the divorce court's order creates sole legal educational custody in the parent who does **not** have physical custody and who is **not** defined as the "parent" per the Education Code in Title 20. See the Indiana Court of Appeals case of *Gonzalez v. Gonzalez*, 893 N.E.2d 333 (Ind.App. 2008), that is described below.

## Part I. Relevant State and Federal Laws

### Indiana Code 20-18-2-13 "Parent"

Sec. 13. "Parent" means:

- (1) the natural father or mother of a child;
- (2) in the case of adoption, the adopting father or mother of a child;
- (3) if custody of the child has been awarded in a court proceeding to **someone other than the mother or father, the court appointed guardian or custodian** of the child; or
- (4) if the parents of a child are **divorced**, the parent to whom the divorce decree or modification awards **custody or control** with respect to a right or obligation under this title.

**Note:** Title 20 of the Indiana Code (IC 20) concerns education. The term "parent" is defined throughout Title 20 so that public schools and the parents, guardians, and custodians with whom they deal will better understand exactly who has legal standing in relation to educational duties and rights regarding the student-child. This statute provides

the general rule when school officials need to decide which person they have a legal duty to involve regarding educational decisions of a child. One exception, which is rare, would be a when a divorce court orders physical custody to one parent and legal custody to another. See the Indiana case of *Gonzalez v. Gonzalez*, on page 3, below.]

#### **Indiana Code 31-9-2-30 "Custodial parent"**

Sec. 30. "Custodial parent", for purposes of IC 31-14-11-2.5, IC 31-14-13-8, IC 31-14-15, IC 31-16-6-1.5, IC 31-16-12.5, IC 31-17-2-22, and IC 31-17-4, means the **parent who has been awarded physical custody** of a child by a court.

#### **IC 31-9-2-83 "Noncustodial parent"**

Sec. 83. "Noncustodial parent", for purposes of IC 31-14-11-2.5, IC 31-14-13-10, IC 31-14-15, IC 31-16-6-1.5, and IC 31-17-4, means the parent who is not the custodial parent.

#### **IC 31-9-2-67 "Joint legal custody"**

Sec. 67. "Joint legal custody", for purposes of IC 31-14-13, IC 31-17-2-13, IC 31-17-2-14, and IC 31-17-2-15, means that the persons awarded joint custody will share authority and responsibility for the **major decisions** concerning the child's upbringing, including the child's **education**, health care, and religious training.

**Note:** Title 31 concerns family and juvenile law. Neither these statutes nor court rulings have made it exactly clear what constitutes a "major decision" pertaining to education in joint-legal-custody situations. Certainly, one would conclude that it is a major decision of both divorced parents whether the child is to be home-schooled or formally schooled (and perhaps even if the formal schooling will be by a public or private institution).

But, it is most likely not a major educational decision that requires both joint-legal-custody parents to agree as to whether or not the non-physical-custody parent may: have lunch at school with the child; attend a parent-teacher conference; receive notice of a suspension and expulsion meeting; volunteer on a field trip; or pick the child up at school.

Or, in other words, can the "joint-legal-custody" parent per the divorce decree, **who is also the "parent" as defined in Title 20's Education Code (i.e., the one who was granted physical "custody or control" during the school week per the divorce decree)**, legally veto the non-major, routine, day-to-day-type requests of the non-physical-custody parent with "joint legal custody?" None of the examples above likely rise to the level of a **major** decision, which means that the person granted physical custody or control of the child during the school day, week, or year is the legal "parent" per IC 20-18-2-13 and is the sole person with whom the school needs to deal.

A helpful Indiana Court of Appeals case involving a "major decision" on health care ruled that at a minimum, the Joint Legal Custody Statute, above, means that the non-physical-custody parent, who was judicially ordered to have "joint legal custody" pertaining to health care, was entitled to be notified of a **medical emergency** involving the child. *Reno v. Haler*, 743 N.E. 2d 1139 (Ind.App. 2001). As applied to the public school setting, this case likely would be interpreted to mean that a school nurse would not be required to inform and consult with the non-physical-custody parent, with joint-health-care legal custody rights, every time the child came to the office with a slight headache complaint and requested an Advil (that the physical-custody-parent had given written permission for the child to take).

In a non-health-emergency situation, **public policy considerations** based on preserving efficient management and fiscal health of public schools would most likely lead a court to rule that this is **not** a major educational or health decision requiring the input of the joint-legal-custody parent who was not granted physical custody or control of the child. This is why the Title 20 definition of "parent" is so important because it establishes the legal rule from the Legislature that for purposes of the public school's relationship with parents, it is only the one granted physical custody or control that the school has a duty to relate to. (See the case of *Crowley v. McKinney*, below, where the

Seventh Circuit Federal Court of Appeals set out excellent public policy arguments in favor of the public school in this regard.)

#### **IC 31-17-2-13 Joint legal custody; finding required for award**

Sec. 13. The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

#### **IC 31-17-2-14 Joint legal custody; division of physical custody**

Sec. 14. An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.

See the case of *Gonzalez v. Gonzalez*, 893 N.E.2d 333 (Ind.App. 2008) for an atypical child custody ruling where the court's order granted the mother physical custody of the two children and both mother and father joint legal custody, with mother making the healthcare decisions for the children and father making the education and religious decisions for the children.

**Note:** Because the Education Code (Title 20) defines "parent" (for purposes of dealing with the public school attended by the child) as the **one granted physical "custody or control"** IC 20-18-2-13, the school normally would be able to tell the non-physical-control father in the *Gonzalez* case that it would only relate to the custodial mother (except, of course, when the father requests to inspect education records which he has the right to review). However, since the Court awarded sole **legal** custody for purposes of making education decisions to the father, the school would be required by judicial order to deal only with the father (even though the children resided with the mother and were under her physical custody and control).

#### **IC 31-14-13-1 Sole legal custody in [unwed] biological mother; exceptions**

Sec. 1. A biological mother of a child born out of wedlock has sole legal custody of the child, except as provided in IC 16-37-2-2.1 [paternity affidavit statute], and unless a statute or court order provides otherwise

....

*As added by P.L.1-1997, SEC.6. Amended by P.L.25-2010, SEC.2.*

#### **IC 31-14-13-2.5 Consideration of de facto custodian factors**

Sec. 2.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

(b) In addition to the factors listed in section 2 of this chapter, the court shall consider the following factors in determining custody:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian,

including whether the child was placed with the de facto custodian to allow the parent seeking custody to:

- (A) seek employment;
- (B) work; or
- (C) attend school.

(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.

(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

*As added by P.L.96-1999, SEC.3.*

## II. Model Statement to Parents Regarding School's Ability to Make Decisions Governing the Child

[Source: Dave Emmert]

When the parent chooses to send his or her child to a public school, Indiana's laws and courts recognize that school officials and teachers "take the place of the parent" with regard to decisions pertaining to the child during the time of the school's supervision of the child. This concept is the "in loco parentis" doctrine, and is expressed by the Indiana Legislature in the Education Code (Title 20) pertaining to student discipline as follows (with emphasis added in italics):

I.C. 20-33-8-8. Duty and powers of school corporation to supervise and discipline students

Sec. 8. (a) Student supervision and the desirable behavior of students in carrying out school purposes is the responsibility of:

- (1) a school corporation; and
- (2) the students of a school corporation.

(b) *In all matters relating to the discipline and conduct of students, school corporation personnel:*

- (1) *stand in the relation of parents to the students of the school corporation; and*
- (2) have the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system, subject to this chapter.

(c) Students must:

- (1) follow responsible directions of school personnel in all educational settings; and
- (2) refrain from disruptive behavior that interferes with the educational environment.

The "*in loco parentis*" legal doctrine is not absolute, and in limited instances parents are granted specific rights by law to intervene in their child's education. Examples are: special education; religious objections to health testing, exams, immunizations, and treatments; and notice of discipline rules and procedures, including the right of notice and an opportunity for an expulsion meeting if the school proposes to remove the child from school for more than ten (10) days.

However, in the area of setting and implementing broad educational policy (such as what courses are taken, how the instruction occurs, and the way the child is evaluated as to grading and promotion), state and federal courts have made it clear that these matters are left in the hands of the policy makers, not individual parents. (Policy makers are our governmental representatives--Congress, the Indiana Legislature, and the local school board.)

One federal court expressed the tension between the alleged right of an individual parent to dictate the excusal of the child from a particular class and the school's right to establish and implement policy as follows:

[Case law does] not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught... [This] would make it difficult or impossible for any public school authority to administer school curricula responsive to the overall needs of the community and its children.

*Leebaert v. Harrington*, 332 F.3d 134 (2<sup>nd</sup> Cir. 2003), at page 141.

### III. Parent Right of Access to Child's Education Records

FERPA (Family Educational Rights and Privacy Act), the federal law governing parent access to the child's education records, broadly defines "parent" as "a parent of a student and **includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.**" 34 CFR 99.3

Indiana's Education Code (Title 20) regarding parental access to education records states:

#### IC 20-33-7. Chapter 7. Parental Access to Student Records

##### IC 20-33-7-1. "Education records"

Sec. 1. As used in this chapter, "education records" means information that:

- (1) is **recorded by a nonpublic or public school**; and
- (2) **concerns a student who is or was enrolled in the school.**

##### IC 20-33-7-2. Custodial and noncustodial parents; **equal access**; exceptions

Sec. 2. (a) Except as provided in subsection (b), **a nonpublic or public school must allow a custodial parent and a noncustodial parent of a child the same access to their child's education records.**

(b) A nonpublic or public school may not allow a noncustodial parent access to the child's education records **if**:

- (1) a court has issued an order that limits the noncustodial parent's access to the child's education records; and
- (2) the school has received a copy of the court order or has actual knowledge of the court order.

### IV. Important Public Policy Considerations

The case of ***Daniel Crowley v. McKinney and Berwyn South School District # 100***, 400 F.3d 965, 196 Ed. Law Rep. 50 (7<sup>th</sup> Cir. 2005), involved a divorce decree that gave Mrs. Crowley **sole legal custody, control, and education** of two elementary-school-age children, but also granted the plaintiff father the **joint legal right of access to his children's educational records maintained by the public school defendants**. When the school denied him access, not only to the records, but also to its property, he sued in an attempt to use his 14<sup>th</sup> Amendment Due Process Liberty Clause rights to compel the school to give him access. The Court, in denying his claim, presented **strong public policy rationale in favor of schools which are caught in the middle of legal and emotional entanglements between divorced parents.**

The *Crowley* case, which sets legal precedent in Indiana, Illinois, and Wisconsin, states in relevant part:

Crowley had long been critical of the "leadership and direction" of the school by McKinney and Jordan, and had expressed these criticisms at public meetings. He had also complained directly to them about his son's being bullied by other children and about the school's "failure to adequately provide Plaintiff with notices, records, correspondence and other documents" that custodial parents receive. As a result of that failure, Crowley "must rely on his children telling him about matters such as upcoming school events or injuries suffered at school, and only hears about incidents such as a gun being brought to Hiawatha School through third parties." In letters to McKinney, Crowley **"asked for increased supervision and response to bullying of his children, and asked that he receive all of the documents received by custodial parents with children attending Hiawatha School."** He even **"provided the teachers and McKinney each with 100 self-addressed envelopes, to facilitate his receipt of all correspondence."** All to no avail; **"Plaintiff's requests have never been granted, and Plaintiff still does not receive all of the items to which he is entitled."** After his son was again beaten up on the school playground, Crowley went to observe his son during recess and was told that he **(that is, Crowley) was not allowed on the playground.** He volunteered to be a playground monitor, but McKinney turned him down. Once, because his son had been feeling ill, Crowley called the school to ask

whether his son was at school that day, and the person who answered the phone refused to tell him. The school also forbade him to attend a book fair held at the school on Hiawatha School Day...

The defendants in the present case ... are denying ... opportunities only to one parent, and that the one who has no custodial rights.

It is difficult for a school to accommodate the demands of parents when they are divorced. The school does not know what rights each of the parents has. It knows which parent has custody, because that parent's address is the student's address, but unless it consults the divorce decree it won't know what rights the other parent has. And since physical and legal custody are different..., the school will not even know whether the parent with whom the child lives has joint or, as here, sole custody.

... Schools have valid interests in limiting the parental presence-as, indeed, do children, who in our society are not supposed to be the slaves of their parents. Imagine if a parent insisted on sitting in on each of her child's classes in order to monitor the teacher's performance or on vetoing curricular choices, texts, and assignments.

Federal judges are ill equipped by training or experience to draw the line in the right place, and litigation over where to draw it would be bound to interfere with the educational mission. It would do so not only by increasing schools' legal fees but also and more ominously by making school administrators and teachers timid because fearful of being entangled in suits by wrathful parents rebuffed in their efforts to superintend their children's education. Interests of constitutional weight and dignity are on both sides of the ledger because academic freedom, which is an aspect of freedom of speech, includes the interest of educational institutions, public as well as private, in controlling their own destiny and thus in freedom from intrusive judicial regulation. ...

The intrusion on public education to which Crowley is inviting the federal judiciary is magnified when the right of participation in a child's public-school education is claimed by a **noncustodial parent**. Of course divorce does not sever the parental relation and by doing so extinguish the fundamental rights that go with it; the state could not "divorce" Crowley from his children unless he were a menace to them. ... Divorce has become so common that it appears that today as many as 10 percent of all schoolchildren are the children of divorced parents. ... **It does not follow that a public school is to be charged with knowledge of the contents of the divorce decrees of its students' divorced parents or that it must allow itself to be dragged into fights between such parents over their children. On the contrary, the more children of divorced parents there are, the greater the burden on schools of arbitrating the quarrels of divorced parents....**

At stake in the present case is the slighter interest of Mr. Crowley in micromanaging his children's education at the school properly chosen for them [by their custodial mother]. So we greatly doubt that a noncustodial divorced parent has a federal constitutional right to participate in his children's education **at the level of detail** claimed by the plaintiff. ...

## V. Enrollment

This is the best time to obtain and record information that establishes who the legal parent(s) is/are. In cases of divorce, legal separation, a court-established guardianship, or other processes such as foster care, the school should request, obtain, or at least document the attempt to obtain, the legal paper work that indicates the legal relationship between the parents and the child. It is also advisable to get the name, address, and other contact information of the noncustodial parent, provided the custodial parent is willing to give it. If a relative is enrolling the child, the school needs to know that person's legal relationship to the child, if any, and the name(s) and other information of the biological parent(s).

## VI. Immunity

The Indiana Education Code's immunity provision in the School Powers Statute at IC 20-26-5-4(17) provides individual school employees and board members protection in any legal action provided that their actions were taken in good faith and within the scope of their duties. Similarly, the Indiana Tort Claims Act at IC 34-13-3 offers similar protections if suit is filed based on an alleged civil wrong. Lastly, IC 34-13-4 furnishes immunity protection if a federal civil rights claim is made. The key to these protections is acting in good faith within the scope of one's duties for the school system.

## VII. Application of Custody Laws to Various Situations

**1. Issue:** What is the noncustodial parent's right to access the child's education records?

**Resolution:** Under federal FERPA law, either parent has a right to **inspect** the child's education record, but **no right to a copy** unless the following exception exists as stated in the FERPA regulations at 34 CFR 99.10(d):

*If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution . . . shall -- (1) Provide the parent or eligible student with a copy of the records requested; or (2) Make other arrangements for the parent or eligible student to inspect and review the requested records.*

So, assuming that both parents live near the school so that there is no right to a copy of the records, each of them could come to school and review such. Under Indiana's version of FERPA, IC 20-33-7-2, however, if a copy of a record is given to the custodial parent, the noncustodial parent has the same right of access as the custodial.

**2. Issue:** We have a 6th grade student who lives with her Mom here in the town of A; Dad lives in the town of B, and the student sees Dad every other weekend. Both parents have joint legal custody according to the court documents. Dad has recently been emailing the teachers for input on her progress in doing homework, etc. He indicated he got involved last year during the last few weeks of elementary school in helping her redo her homework every other weekend when she visited. He also gave the elementary school permission via a note saying that Mom, has his permission to talk with the school. He indicated he is going to send another letter giving the grandmother the authority to talk again this year so he "can get the straight facts."

In talking with Mom, she does not want us to talk with Dad, nor the grandmother (who is Dad's mother). I informed her that Dad has the right to receive educational records as he has requested unless the court takes that right away and we are provided some court documentation. I'm not sure we can honor Dad's request about talking to the grandmother in his absence. Am I correct?

**Resolution:** You are correct that Dad is entitled to see the educational records under FERPA and state law and, since he lives a good distance away, is entitled to a copy of such. However, the Indiana definition of parent at IC 20-18-2-13(4) states:

(4) if the parents of a child are divorced, the parent to whom the divorce decree or modification awards custody or control with respect to a right or obligation under this title.

This is somewhat confusing because it says "awards custody or control." Here you have a legal joint custody situation, but the mother has "control" during the school week. In my view, the school can take the position that the father is not the legal "parent" in relation to those issues outside of education records of the child. Hence, if the father lived in your school system, but did not have actual control of the child, he would only have access to the education records, but not to face-to-face meetings and telephone conversations with teachers and administrators. Therefore,

he cannot delegate to his mother, who lives in Town A, the ability to talk with school personnel.

Consequently, I believe that you may legally honor the Mom's request that you and your staff not talk to the father or his mother concerning the child. As to the right to attend a parent conference, the Indiana definition of parent at IC 20-18-2-13 only give Mom, who has custody and control, this right, not Dad or his designee mother. If the father is a noncustodial parent, he is not the legal "parent" under Indiana law and would have no right to attend a parent conference. If at the parent conference, the mother, as "parent" is given certain education records, then under the Indiana statute, above, father would have the same right to a copy of the record (but not to attend a conference).

The statute defining "parent" is somewhat confusing because it says "awards custody or control." If you have a legal joint custody situation, but the mother has "control," the school in my view can take the position that the father is not the legal "parent" in relation to those issues outside of education records of the child. Hence, if the father with joint **legal** custody, but not joint **physical** custody, lived in your school system, but did not have actual physical control of the child, he would only have access to the education records, but not to face-to-face meetings and telephone conversations with teachers and administrators. Lastly, only if the noncustodial father with joint legal custody can obtain a court order that a routine parent conference involves a "major decision" would you have the duty to involve him in that conference.

**3. Issue:** If the child living with the mother (who was granted legal custody and control) leaves the home to reside with the grandparent in our school district, who is the legal "parent" in this situation?

**Resolution:** It would still be the mother, but I advise in this situation that the grandmother and mother sign the IDOE third party custody agreement form ("Form 2") that states that the grandmother is assuming the duties and liabilities of the mother with respect to the school. The refusal of the mother to sign, which should be noted on the form, would not in my opinion alter the result so that you would be able to deal only with the grandmother who affirms on the form under penalty of perjury that her representations are true.

**4. Issue:** We are trying to determine what rights the biological father would have when he and the mother were never married. The mother of a 1st grade student came to the office today telling me that she was leaving this boy's father. The father's name is on the boy's birth certificate that we have in our records. She wanted to make sure that the boy would not be allowed to leave school with the father. I asked her if she had any court orders that would restrict the father's rights. She said she did not have anything but was going to see her lawyer in a couple of days. I told her without a court order, the school would not be able to keep the boy away from his father. She then returned later with a letter from a "Victim Advocate." The letter states the following:

"Enclosed is a copy of two Indiana Codes regarding unwed parents. Under Indiana law, an unwed mother has sole custody of a child unless there is another court order stating otherwise. This is true even if the biological father has signed the birth certificate. In order to establish paternal rights, the biological father would have to establish paternity through the court and request paternal rights."

The codes she cited were I.C. 31-14-13-1 and I.C. 16-37-2-2.1.

**Resolution:** IC 31-14-13-1 states that the mother of a child who is born out of wedlock has **sole custody of the child unless certain court orders state otherwise**. One of these options references IC 16-37-2, whose sections establish a paternity affidavit. If a paternity affidavit is executed per the requirements of the statute, it establishes paternity of the child by the male who signs it. It may also establish joint custody if both parents agree to it. This affidavit is to be filed with the local health officer once executed. **So if no paternity affidavit exists and there is no other court order establishing paternity or the rights of the father, his name on the birth certificate is not legally binding.** (The local health officer would be the one for the county where the child is born. So in order to determine if there is a paternity affidavit, you will need to know the county where the child was born.)



**5. Issue:** We have a 6th grade student who lives with her Mom here in the town of A; Dad lives in the town of B, and the student sees Dad every other weekend. Both parents have joint legal custody according to the court documents. Dad has recently been emailing the teachers for input on her progress in doing homework, etc. He indicated he got involved last year during the last few weeks of elementary school in helping her redo her homework every other weekend when she visited. He also gave the elementary school permission via a note saying that Mom, has his permission to talk with the school. He indicated he is going to send another letter giving the grandmother the authority to talk again this year so he "can get the straight facts."

In talking with Mom, she does not want us to talk with Dad, nor the grandmother (who is Dad's mother). I informed her that Dad has the right to receive educational records as he has requested unless the court takes that right away and we are provided some court documentation. I'm not sure we can honor Dad's request about talking to the grandmother in his absence. Am I correct?

**Resolution:** Dad is entitled to view the educational records under FERPA and state law and, since he lives a good distance away, is entitled to a copy of such. However, due to the Indiana Education Code's definition of "parent" at IC 20-18-2-13(4), and the divorce decree not giving Dad physical "custody or control," there is a legal **joint** custody situation, but the mother has **physical custody and control** during the school week. Hence, the school can take the position that the father is not the legal "parent" in relation to those issues he is attempting to assert himself into (other than access to the education records of the child). As a result, he would only have access to the education records, but not to face-to-face meetings and telephone conversations with teachers and administrators. As a non- "parent," he cannot delegate to his mother, who lives in Town A, the ability to talk with school personnel. The most he could do is give written authorization that his mother has the right to inspect the child's education records.

Consequently, the school may legally honor the "parent" Mom's request that your staff not talk to the father or his mother concerning the child. As to the right to attend a parent conference, the Indiana definition of parent at IC 20-18-2-13 only gives Mom, who has custody and control, this right, not Dad or his designee mother. If the father is a noncustodial parent, he is not the legal "parent" under Indiana law and would have no right to attend a parent conference. If at the parent conference, the mother, as "parent" is given certain education records, then under the Indiana statute, above, father would have the same right to a copy of the record (but not to attend a conference).

**6. Issue:** Divorced Mom lives in our school corporation and is the custodial parent. Dad lives out of state. Mom died suddenly with an expulsion meeting in two days and we have no information on how to contact Dad. Who can the principal talk to? Who can principal share education record information with?

**Resolution:** A principal can talk to any person generally, but not about a student's "education record" under FERPA. Per 34 CFR 99.3, the definition of "parent: includes a natural parent, a guardian, **or an individual acting as a parent in the absence of a parent or a guardian**. Therefore, the principal may discuss "education record" information with any person who stipulates that this person is "acting as a parent" in the absence of the deceased parent.

**7. Issue:** If the child living with the mother (who was granted legal custody and control) leaves the home to reside with the grandparent in our school district, who is the legal "parent" in this situation?

**Resolution:** It would still be the mother, but it is advisable in this situation that the grandmother and mother sign the IDOE third party custody agreement ("Form 2") that states that the grandmother is assuming the duties and liabilities of the mother with respect to the school. The refusal of the mother to sign, which should be noted on the form, would not in my opinion alter the result so that you would be able to deal only with the grandmother who affirms on the form under penalty of perjury that her representations are true.

**8. Issue:** What is the role of a CASA (court appointed special advocate) when he/she asks for information and or records from the school?

**Resolution:** Juvenile courts have the authority to appoint persons who will assist the court in advocating for children who are subject to IC 31-34 (child in need of services) and IC 31-37 (juvenile delinquency). See IC 31-31-7-1. However, there is no law giving a CASA the authority of a "parent" with respect to the school. A juvenile court may give them this authority, but the school administrator should request a document from the court that sets out the CASA's authority with regard to the school.

**9. Issue:** Parents had a child out of wedlock, but both names are listed on their daughter's birth certificate. Mom does not want Dad to pick the daughter up from school, and the daughter does not want to leave with him. Dad came in today and wanted to take her out of school for an appointment. Mom did not know anything about the appointment, and asked that we not release her with him. Dad provided a paternity order from circuit court that established parent rights and visitation. For custody and visitation, the order stated:

"The mother and father shall share joint custody and the mother shall have primary physical custody of all three children. The father shall have visitation at reasonable times and places as agreed by the parties."

My question is, since visitation must be agreed by the parties, does visitation include coming to get the child from school? Does Dad need permission from mom to pick her up, or can he get her anytime he wants?

**Resolution:** Because the court order grants the mother physical custody of the child, she is the "parent" as defined in the Education Code with regard to interacting with the school. The father having "joint custody" means that he may jointly, with the mother, make **major decisions** with regard to the child's health, religion, and education. Picking up a child is not a major decision with regard to education. Neither is coming to school to see or pick up the child, nor would this be "visitation" within the meaning of the judicial order. Hence, the father needs the permission of the mother before getting access to the child at school.

**10. Issue:** A father showed up with paperwork indicating he had joint custody. We called the mom and she indicated her daughter was not to go home with him. He refused to leave. Mom actually showed up and he finally left on his own when the cops showed up. If they provide joint custody paperwork, do we have to let them go with the parent that first makes the request?

**Resolution:** Did the court order give the father joint **physical** custody or joint **legal** custody, or both? The answer to this will determine who the "parent" is for purposes of the right to transact business with the school. If the father was given only joint **legal** custody, then he only had the right along with the mother to make **major** legal decisions with regard to the three areas of education, religion, and health. A major education legal decision does not involve the issue of which parent may pick up the child after school (but rather such more significant issues as where to enroll a child or when to withdraw or transfer a child).

If the father (along with the mother) has both physical and legal custody, due to the definition of "parent" in the Education Code at IC 20-18-2-13(4), he is the "parent" only during the days that he has physical control of the child. This section of the law speaks to divorced parents and defines "parent" as the one granted "custody or control." If both parents have legal custody, a judge would likely decide that the "tie breaker" criterion is the parent who has "control," meaning physical control of the child. Hence, the father would only be the "parent" on the days that he has the physical control in the situation where the court order grants physical control of the child to one parent on certain days and to the other parent on other days.